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ABSTRACT

This pamphlet abstracts from the National Association of College and University Attorneys' "Sexual Harassment on Campus: A Legal Compendium," Third Edition, suggestions for administrators and others on conducting an appropriate and timely sexual harassment investigation. Specific topics covered are: (1) "Conducting an Appropriate and Timely Investigation of a Complaint of Sexual Harassment Is Important Because"; (2) "Biggest Mistakes in Investigating"; (3) "Choosing an Investigator"; (4) "Creating a Strategy for Action"; (5) "The Complaint Intake"; (6) "The Anonymous Complainant"; (7) "Timeliness of the Complaint"; (8) "Setting Up the File"; (9) "Interview of the Complainant"; (10) "After the Interview with the Complainant"; (11) "Meeting with the Alleged Harasser"; (12) "Other Witnesses"; (13) "Other Procedural Matters"; (14) "Weighing the Evidence"; (15) "The Administration's or Management's Role During the Investigation"; (16) "Concluding the Investigation"; and (17) "Post-Investigation." (BF)

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THE PUBLICATION SERIES

How to Conduct a Sexual Harassment Investigation

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This is one of a series of publications from NACUA, an organization of colleges and universities joined together for mutual assistance in identifying and resolving legal problems.

The views expressed herein are attributed to the author and not to the National Association of College and University Attorneys. This pamphlet is intended for general informational purposes only, and does not constitute legal advice. An attorney should be consulted regarding the specific facts and circumstances associated with any legal matter or case.

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How to Conduct a Sexual Harassment Investigation

Introduction

The most frequently-asked questions from college and university administrators, faculty and staff, who have even the slightest responsibility for investigating claims of sexual harassment on their campuses, start with *What do I do when...?*, *How do I ...?* or *What happens if...?* The purpose of this pamphlet is to pull together in one place the cumulative "best advice" from our numerous collective years of experience working in this area, speaking on the topic, and responding to these same kinds of questions from institutions of all types and sizes.

This publication is not a "traditional" pamphlet that focuses on a particular legal question or issue, analyzes various aspects of that issue and offers a mix of legal and practical advice for additional steps or further study. Instead, the information represents our best effort at creating practical, sound suggestions for conducting an appropriate and timely sexual harassment investigation. This is also the type of resource that can be viewed as a "work in progress," insofar as there will always be a better way to do something and there will always be extenuating circumstances that need to take into account different responses to the questions posed above.

The information in this pamphlet also appears in the Third Edition of *Sexual Harassment on Campus: A Legal Compendium*, also published by NACUA. It is reprinted here for ease of use and distribution to administrators and others involved in investigating claims of sexual harassment.

I. Conducting an Appropriate and Timely Investigation of a Complaint of Sexual Harassment is Important Because:

- A. It is more likely to result in a swift resolution of disputes.
- B. It probably will decrease or minimize the liability exposure for the institution - an employer is liable if it knows or should have known of harassment and fails to take prompt and reasonable corrective action - and therefore will cost the institution less.
- C. It will demonstrate the institution's commitment to ending sexual harassment on campus and will build credibility for the process and its investigators.
- D. It generally is less destructive to employee morale and less divisive to the unit involved than an investigation conducted by an outside agency.
- E. The institution can use its own standard of behavior that it expects in the academic community rather than that of an external entity.
- F. There is likely to be less publicity, and privacy concerns are more likely to be met.

II. Biggest Mistakes in Investigating

- A. Excessive delay in beginning the investigation.
- B. Inadequate feedback to the complainant and alleged harasser during the investigative process.
- C. Inappropriate disclosure of confidential information.
- D. Lack of thoroughness or failure to complete an investigation.
- E. Failure to recognize first amendment/academic freedom issues.

III. Choosing an Investigator

- A. An institution's written procedures for investigating a sexual harassment complaint may dictate who will be the investigator(s) of the matter. However, if there is discretion permitted under the policy for selecting an investigator, the following is recommended.
- B. Choose individuals who have credibility with and are respected by their colleagues. Consider how well they will perform if called upon to be witnesses in subsequent litigation.
- C. Choose individuals with good people skills who can be both empathic and objective, and who can read non-verbal cues.
- D. Note: Do not assume choosing the institution's attorney as the investigator will protect the investigative materials with the attorney/client privilege or the attorney work product exception. Courts have ruled otherwise, exposing the thought processes of legal counsel and making the attorney a witness and ineligible to represent the institution.
- E. Have at least one investigator of the incident be of the same or superior rank as the alleged harasser to give immediate credibility to the investigation. This is particularly true when the alleged harasser is a faculty member or medical doctor at the institution's hospital or medical school.
- F. Consider having at least one male and one female on the investigative team. They should both be present throughout the initial intake interview and each part of the investigation. Women complainants are more likely to be open with other women and may code their responses if only a male is present. Male and female investigators may hold different beliefs as to the seriousness of an event. Having both present broadens perspectives and provides a reality check and support for each other if the investigation proves time-consuming and/or emotionally draining.

- G. Despite the advantages listed above, it is always more important to begin investigating the complaint than to get the optimum pairing.
- H. The investigator must have autonomy and power.
 - 1. The investigator acts on behalf of the educational institution trying to find facts and remedies for the educational institution and make the best possible decision.
 - 2. The investigator does not represent the complainant or the alleged harasser.
 - 3. The investigator is a neutral party, but available to both sides.
 - 4. The investigator should report directly to the administrator who can best determine the organizational response in order for the investigator to be most effective.
- I. The investigator must be someone with sufficient time and stamina to handle the crucial but draining daily telephone calls and reassurance that must be given during an investigation.
- J. The investigator is NOT a counselor, but is there to provide information, acknowledge the emotions that are felt and refer that person to the proper resources if counseling is indicated.
- K. Committee Approach to Investigation
 - 1. Advantages: A committee is a familiar part of campus life and therefore may be more readily acceptable than a single or pair of investigators.
 - 2. Disadvantages: Unless the committee is carefully trained, it most likely has no special skills; it may be intimidating to a complainant; it is less likely to come to a speedy resolution; consensus may be difficult or impossible to achieve; it is not in a position to take appropriate action; it is difficult to maintain the appropriate level of confidentiality with an increased number of individuals aware of the facts; and it is hard to disband this type of committee if it is not proving effective.

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3. Possible Solution: Have a periodic review of the work of the sexual harassment investigators by a committee to reduce suspicion of the investigators.

IV. Creating a Strategy for Action

- A. An institution's procedures may outline a specific time table for the investigation. More likely, it will merely give a deadline for the investigation to be completed. In that event, it is important to create a time frame for action.
 1. Remember that it is absolutely critical as part of any policy or procedure that there be a prompt investigation and resolution of complaints.
 2. A delay indicates to employees a lack of interest or commitment, which leads to demoralization of the work force and perhaps even to legal liability.
- B. Prior to starting the investigation, the investigator should create a preliminary time line. It should include general time frames for interviewing witnesses, gathering documents, completing a draft report, etc. that allow the investigation to be completed within whatever time period is required by the institution's procedures. The time line should be updated regularly as events warrant, such as illness or absence of witnesses.
 1. As soon as the investigator realizes there may be a problem completing the investigation within a required time, the investigator should so notify the complainant and the alleged harasser with the reason for the delay and, if possible, get their written consent to extend the time to complete the investigation.
- C. The procedure needs to be coordinated with procedures in other policies on campus that may apply to the situation. For example, the faculty code or tenure policy may contain grievance procedures that must be respected if the accused is a faculty member.

Grievances against staff employees may be best investigated and resolved by using already existing procedures to solve other discrimination actions. Union contracts may also dictate how an investigation is to proceed.

V. The Complaint Intake

- A. It is important to have an intake procedure in place because the institution needs to be able to take a complaint immediately when first contacted by the complainant.
 - 1. Many complainants have "second thoughts" and will not return for another appointment if an intake person is not ready to act.
 - 2. Try to avoid having to send the complainant to more than one office because the first one approached is the wrong one to handle this type of grievance.
- B. Depending on the size of the institution, it may be preferable to have more than one place in which to take complaints, so as to increase the comfort level of the complainant with the process.
- C. The initial intake person needs to explain gently, but firmly, to the complainant the importance of getting the complaint in writing (even though the complainant may be reluctant to do so) in an effort to increase the institution's options in taking appropriate action to stop the harassment and prevent its reoccurrence. The intake person needs also to get sufficient information about the situation to turn the matter over to the appropriate administrator to initiate an investigation. The intake person may or may not be the person assigned to do the investigation.
- D. If drafted with the assistance of the intake person, the complaint should be as specific as possible, i.e., it should provide the who, what, when, where and how of the incident(s) complained of, and be dated and signed by the complainant and the intake person.

1. Even vague complaints may put the institution on notice requiring some investigation to occur to gather the missing information needed to determine if further investigation is necessary.

VI. The Anonymous Complainant

- A. It is a common occurrence for a complainant to be unwilling to reveal his/her identity to the alleged harasser or to return the day after filing a complaint expressing a desire to withdraw it. There are several ways to deal with this situation.
- B. The intake person can reassure the complainant that the institution will protect him/her from retaliation by the alleged harasser, that it has a very strong policy against retaliation and that it will vigorously enforce it. This may encourage the complainant to allow his/her name to be shared.
- C. The intake person can reassure the complainant of the importance of the issue, and that the institution does not want to ignore it because of its moral responsibilities. The intake person can also explain how limited the options are to resolve a problem without sharing the complainant's name because of the due process rights or contractual rights of the accused.
- D. The intake person can try to convince the complainant to consider returning to file a complaint once the alleged harasser is no longer in a position to do harm to the complainant (e.g. when the class term is over, when the dissertation is approved, when a job situation changes).
 1. The intake person should then follow up with the complainant at some future time to see if there is no longer reluctance to go forward with the complaint.
- E. If the complainant still wishes to remain anonymous, the intake person should share with the administrator responsible for overseeing the institution's sexual harassment policy whatever information can appropriately be shared to determine what the

institution can do about the situation (e.g., conduct a workshop on sexual harassment in the unit that employs the alleged harasser, communicate with the alleged harasser in a general way regarding the behavior about which there has been a complaint, etc.).

- F. Consider initiating the complaint on behalf of the institution, if the institution's complaint procedures allow it. This often relieves the fears of the complainant, who may then become willing to pursue the action. It also protects the institution.

VII. Timeliness of the Complaint

- A. Often an institution's procedures will specify a time period within which a complaint must be filed. If they are silent on this, there is a time period beyond which it is unreasonable to conduct an investigation - three years since the last incident occurred - which is the statute of limitations for bringing a sexual harassment action in court in most jurisdictions.
- B. The complaint should be examined by the investigator to determine if it is timely. If it does not appear so, the investigator should question the complainant about the reasons for the delay. Legal counsel should be consulted to determine if the reasons are such that the matter should still be investigated.

VIII. Setting Up the File

- A. A separate investigative file should be established apart from the personnel or student file of the alleged harasser or the complainant. Only when allegations are substantiated should a report be prepared for the alleged harasser's personnel or student file.
- B. Should the matter being investigated end up in litigation, the investigation file at public institutions can be required to be turned over to the party suing the institution. In some states, investigative files are public records subject to disclosure. It is

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also possible that an alleged harasser may attempt to intimidate the investigator by filing a defamation action against him/her and try to use the investigative file as evidence of such. Therefore, only factual matters, not idle speculation, should be maintained in the file. Consider discarding initial drafts of documents once they are no longer needed.

- C. Include in the file a copy of the policy and procedures that are being followed in the investigation. If litigation does occur, it may be sufficiently remote in time that the procedures and policy may have been amended and it will be important to know which were in place at the time of the investigation.
- D. Have a sheet of paper inside the cover of the file on which to record the date of each activity that is part of the investigation. This may be needed later to confirm the existence of a prompt investigation.
- E. Include all written documentation, evidence and relevant institutional policies in the file, beginning with the complaint. Also include notes from interviews with the complainant, the alleged harasser, witnesses and others.

IX. Interview of the Complainant

- A. The first step in the investigation will be interviewing the complainant, if the intake person is different from the investigator. A sufficient amount of time should be set aside for the initial interview, preferably at least two hours.
 - 1. A complainant is usually very emotional, often embarrassed with low self-esteem, and is discussing a very private matter. A complainant often has an history of being abused or vulnerable. Therefore, the investigator must allow time for the conversation to wander.
 - 2. The goal should not be to be as efficient as possible in the interview. Time is needed to allow a rapport to develop in order to reduce stress.

3. The use of a tape recorder will probably inhibit the interviewing process. However, at the professional level, note taking by the investigator is acceptable. Taking notes with nonprofessional workers may result in distrust. A possible solution is to have one person ask questions and one person take notes. Another is to take minimal notes during the interview and enhance them immediately after the interview.
- B. When scheduling the interview, if the institution's procedures permit it, tell the complainant that he/she is allowed to bring with him/her a support person or advocate. If the complainant wishes to bring an attorney, and the institution's procedures permit it, be sure the attorney knows the limits of his/her participation, e.g., to advise the complainant, but not ask questions or comment on the matter.
- C. Choose a site for the interview that will make the complainant comfortable and where privacy is assured, such as an adequately-sized office. Note that interviewing at the complainant's residence may give the appearance of soliciting the complaint so that a more neutral site is preferable.
 1. If an advocate attends, place him/her in a place where visual cues are inhibited, such as side by side or a little behind the complainant.
- D. Begin the interview by describing the purpose of it, the institution's strong desire to eradicate sexual harassment and its non-retaliation policy, without implying it will occur, but also telling who to contact if it does. Remind the complainant of the need to give his/her name to the alleged harasser, that no face-to-face meeting with that person need occur during the investigation unless the complainant wishes it, and that respect for confidentiality and privacy should be maintained by the complainant, as well as the investigator, to the extent possible during the investigation and thereafter. Do not promise absolute confidentiality.

E. Questions to ask the complainant during the initial interview:

1. What happened and what was the complainant's reaction to it? It is important that the individual describes concrete situations rather than just "he propositioned me."
2. When did it happen?
3. Who in the unit knows that it happened?
4. How did it affect the complainant's work?
5. Who has experienced the same type of behavior?
6. Who in administration or which supervisor has been previously notified by the complainant about the incident?
7. What did that person do?
8. What documentation does the complainant have that supports his/her story?
9. What does the complainant expect as an outcome, i.e., to have the behavior stopped, counseling, back wages, etc.?
Note: Often the complainant does not know what he/she wants, but instead, wants the investigator to tell him/her what to do. Note also: Avoid making implied promises that what the complainant wants is what will occur.

F. Remind the complainant not to discuss the investigation with others in the work place. Explain doing such might give rise to a claim of defamation by the alleged harasser. Explain also that to do so increases the perception by the harasser that he/she needs to retaliate in some way against the complainant for making the complaint. Often the complainant will talk anyway. However, as a result, other complainants who had similar experiences with the alleged harasser may come forward, who have prepared themselves emotionally for the interview with investigators.

G. If appropriate, suggest that the complainant talk to a source of outside support or get counseling. However, it is important that

this is not done in a way that can be interpreted as validating the complaint, as it is important for the investigator to remain neutral.

- H. Avoid making premature commitments to the complainant.
- I. Inform the complainant that his/her written complaint will be shared with the alleged harasser.
- J. Outline the timetable of the investigation and the actions that the investigator will take.
 - I. Example: Within 15 working days of receipt of the complaint, the investigator shall interview the alleged harasser and (if appropriate or applicable) his/her supervisor, and determine if there exists probable cause to conduct a full investigation of the allegation.
- K. Inform the complainant that he/she will be kept apprised of the investigation.
- L. Thank the complainant for coming forward with the issue.

X. After the Interview with the Complainant

- A. The individuals who need to know about the complaint should be limited to as few as possible.
- B. In a workplace situation, the immediate supervisor of the complainant needs to know because there may be a change in the complainant's work performance and no disciplinary action should be taken against the complainant because of that.
- C. The supervisor of the alleged harasser needs to know so the supervisor can watch for further incidents of harassment and understand why the alleged harasser may need to be gone for interviews during work hours.
 - I. It is preferable, too, for the supervisor to hear of the incident first from the investigator rather than a colored version from the alleged harasser.

2. It is important for the supervisor to feel he/she is being kept informed so that it does not appear that the investigator is interfering in the operation of the employing unit.
- D. The investigator needs to tell the alleged harasser that a complaint has been lodged against him/her.

XI. Meeting with the Alleged Harasser

- A. Arrange the meeting as soon as possible. Inform the alleged harasser when scheduling the meeting of its purpose. If the institution's procedures so permit, notify him/her that he/she may have a support person present. Note: This may be required by some institution's procedures or by union contracts. Wait to go into detail over the allegations until the face-to-face meeting, but assure him/her that he/she will have an opportunity to refute the allegations.
- B. At the interview, describe the behaviors and ask if they have occurred. Do so without any judgmental comments or inferences.
- C. After the behavior has been described, if the alleged harasser agrees that the behavior happened, then label it as sexual harassment, if appropriate, and tell the alleged harasser that it is unacceptable. Note: Many alleged harassers agree that they did in fact do the action about which the complaint has been made, but they tend to interpret the action differently as far as its severity or intent. If the alleged harasser denies that the behavior happened, invite him/her to tell his/her side of the story. Ask the alleged harasser if he/she has an explanation or theory as to why the accusation was made.
- D. Tell the alleged harasser that the institution takes complaints seriously and has an obligation to investigate them.
- E. Explain the institution's definition of sexual harassment and give a written copy of it and the institution's sexual harassment policy and procedures to the alleged harasser. Also explain it is against the law to retaliate

against a complainant, and that could include actions or comments by the alleged harasser.

- F. Share a copy of the written complaint with the alleged harasser, but only after omitting names and identifying information about individuals, other than the complainant, who have not yet indicated a willingness to have their names shared with the alleged harasser.
- G. Ask the alleged harasser for a written version of his/her side of the story.
- H. Ask for a list of character witnesses or witnesses to the alleged behavior.
- I. Ask for any documents that would substantiate his/her version of the incident(s).
- J. Encourage the alleged harasser to limit his/her dissemination of the complaint and conversation about it. Explain that the investigator will try to keep the matter confidential to the extent permitted by law.
- K. Give an estimate as to how long the investigation will take. Explain that new information will be shared with the alleged harasser as the investigation progresses.
- L. Consider if the type of allegation and the circumstances are such that the complainant should attend the meeting between the investigator and the alleged harasser, should the complainant so desire. If the harasser has no prior history of harassment and only one complainant is involved, this may give the complainant some control and power over his/her own problem.

XII. Other Witnesses

- A. Contact other witnesses as soon as possible. Find out if there are any availability problems to determine the order of interviewing. Keep track of who suggested interviewing a particular witness. Prepare a list of questions to ask.
- B. Explain that the information they share will be kept confidential to the extent permitted

by law, but that absolute confidentiality cannot be promised. Do not share with them the details of the complaint other than those they need to know in order to provide information.

- C. Do not ask if they have seen or experienced "sexual harassment;" ask instead about specific behaviors that they have observed.
- D. Ask if from their point of view the alleged harasser was bothering the complainant and why.
- E. Ask if there are others who might be able to comment on the interaction or if there is any documentation of which they are aware that might relate to the alleged behavior.
- F. Ask if the complainant complained to them about the harasser's behavior.
- G. While it is acceptable to ask about a complainant's attire and appearance to determine if the conduct in question was welcomed, questions about the complainant's past and present sexual history may be limited by state law. Before asking such questions, the investigator should consult with legal counsel concerning the appropriateness of doing so.
- H. Explain the institution's definition of sexual harassment, and give them a copy of it in writing.
- I. Explain the need to limit speculation and conversation about the matter in order to protect themselves from allegations of defamation. Also explain the institution's policy against retaliation for participating as a witness in an investigation and to whom any retaliation should be reported.
- J. Find out if they anticipate leaving the area for any period of time. If so, it may be appropriate to get a signed statement about the incident prior to their departure. Counsel should be consulted about the proper form of such a statement to preserve it for use in subsequent legal proceedings.
- K. Determine if a written statement should be obtained of witnesses who will be available. Such statements are discoverable and may

lock a witness into a set of facts that the witness may want to change later. Again, consult with counsel about the advisability of obtaining such signed statements.

XIII. Other Procedural Matters

- A. Type up notes from interviews as soon as possible after they occur and ask the interviewee to verify them. Make a separate report of the interview that contains the investigator's impression of the witness' credibility, nervousness, or nonverbal behavior.
- B. Maintain a current list of addresses and phone numbers of all individuals contacted.
- C. Obtain and review relevant employment and student records.
- D. Check with legal counsel about any First Amendment/academic freedom concerns raised by the allegations.
- E. Keep the complainant and the alleged harasser apprised of the progress of the investigation.
- F. Sometimes a complainant will file a sexual harassment complaint with an outside state or federal agency before the internal institutional investigation is completed. Courts divide as to whether an institution can elect to stop its investigation at that point. Some view it as unlawful retaliation to do so; others believe it is not. Legal counsel should therefore be consulted before a decision is made to terminate an investigation because a complaint with an outside agency has been filed.

XIV. Weighing the Evidence

- A. Most institutions' procedures will specify what standard of proof the evidence must meet to find that there is reasonable cause to believe sexual harassment did occur, and state that the burden of proof to produce such will be on the complainant. In the absence of a standard of proof, the one most likely to be employed is the preponderance

of evidence standard, that is, the complainant must demonstrate it is more likely than not that sexual harassment occurred in violation of the institution's policy.

B. In the situation where there are no witnesses and it is the complainant's word against the accused harasser, the investigative team will have to look at all the facts and circumstances surrounding the allegation to determine if there is reasonable cause to believe the harassment occurred. This includes considering:

1. If the complainant told anyone else of the harassment,
2. If there was a change in behavior in either or both of the individuals after the alleged harassment incident(s),
3. The internal consistency of their statements compared with other statements made and behaviors observed,
4. The timing of the complaint in relation to the occurrence of the alleged behavior,
5. The existence of similar complaints by others, and
6. How credible the complainant and the alleged harasser are. The investigative team should tie credibility assessments to concrete behavior or incidents as much as possible, such as the individual's demeanor or nonverbal behavior.

XV. The Administration's or Management's Role During the Investigation

- A. The administration must be willing to stay out of the way during the investigation.
- B. The administration must maintain an open mind to evaluate the results of the investigation.
- C. The administration must promise no retaliation and it must be sensitive to the need to heal the work place after the investigation is concluded.

XVI. Concluding the Investigation

- A. Review notes and determine if all relevant facts have been gathered, all witnesses have been interviewed, and all relevant documents have been obtained. Seek clarification of such as needed.
- B. Make a list of all facts and the data that supports each one.
- C. Evaluate each fact and determine if the majority of the evidence supports or refutes it.
- D. Determine if an additional investigation would resolve the disputed facts and, if so, conduct it.
- E. Consult with legal counsel regarding any questions of law that might affect the evaluation of the facts.
- F. Review the components of sexual harassment and determine if the facts exist to support each component, e.g. was the conduct "unwelcome," was it based on gender, was it quid pro quo or hostile environment harassment, was it abusive or hostile. The institution's procedures or state law may dictate the viewpoint from which to make these assessments. If not, use the viewpoint of a reasonable person.
- G. Prepare a written report describing the complaint allegations and the factual findings. A chronological presentation may be the easiest to follow. Include a description of all the interviews and any documents reviewed. Distinguish between first-hand knowledge and hearsay. Determine if reasonable cause exists to believe the institution's sexual harassment policy has been violated and state the rationale for such.
- H. Depending on the institution's procedures, the report may also include a recommendation for a particular corrective, disciplinary sanction if cause is found. The sanction proposed needs to be one reasonably calculated to end the harassment and avoid its repetition.

XVII. Post-Investigation

- A. Share the outcome of the investigation separately with the complainant and the alleged harasser. If harassment has been found, meet first with the alleged harasser to allow one additional opportunity for an explanation of his/her side of the story. Inform the alleged harasser of the institution's procedure from that point, e.g. that the supervisor will determine the discipline to be imposed, that the alleged harasser may request a hearing on the proposed discipline, that the decision may be appealed within the institution, etc. Remind the alleged harasser that retaliation is illegal and will be further cause for discipline.
- B. The alleged harasser should receive a copy of the document that will be used to support disciplinary action. The complainant need not receive the actual document, but should have the results summarized orally or in writing, unless state law prohibits this. The complainant should also be told if the allegations were substantiated, and what, if any, appropriate disciplinary action will be taken. The complainant needs to know of any proposed restrictions on the behavior of the alleged harasser that, if violated, would affect the complainant, and who, at the institution, to notify should that occur. Finally, the complainant should be reminded of who to notify in the event there is retaliation.
- C. If a complainant decides not to go forward at some point during the investigation, the institution may still be liable for any future incidents. Therefore, do not require a complaint to be investigated to a conclusion in order to warn an alleged harasser of inappropriate behavior.
- D. If the conclusion is that offensive remarks, but no threats, were made, and that the complainant is annoyed but not damaged, one possible resolution is to recommend that the harasser be told to stop and that the directive be followed up in writing. People tend to take a written letter more seriously than an oral warning.

- E. If the conclusion is that it was not harassment, but welcomed behavior, consider recommending a reprimand to the alleged harasser for poor judgment if he/she is the complainant's co-worker, or more severe discipline if he/she is the complainant's supervisor or manager, as the latter should be held to a higher standard of behavior.
- F. If the conclusion is that the complainant made a knowingly false complaint, this should be treated as a serious offense, with appropriate severe discipline for the complainant. Every effort should be made to rehabilitate the reputation of the alleged harasser.
- G. If there are multiple complainants or the complainant is badly hurt, a recommendation of a suspension, transfer or termination of the sexual harasser may be in order.
- H. In such a situation, consider recommending paid counseling for the complainant.
- I. If it is workplace harassment, consider recommending transfer of the harasser or the complainant (consider the latter only if some disciplinary action occurs against the harasser so the complainant is not penalized for complaining).
- J. Always be aware of the possibility that a supervisor may over-react to an allegation that an employee has committed sexual harassment because of other possible work-related performance problems that the supervisor has had with the employee. To over-punish for a particular sexual harassment incident may result in the loss of credibility for the investigative program. Above all else, it is important to be consistent in the recommended disciplinary sanctions.
- K. Share the report with the appropriate administrators responsible for supervising the alleged harasser and imposing the discipline.
- L. Follow up at reasonable intervals to ensure that there is no recurrence of harassment and no retaliation.
- M. Maintain the investigative file in a location that preserves the confidentiality of the file.

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